



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Valenzuela Engineering, Inc.

File: B-280984

Date: December 16, 1998

Jerry H. Valenzuela for the protester.

Clark J. Hulce, Esq., U.S. Army Corps of Engineers, for the agency.

Jeanne W. Isrin, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Proposal properly was rejected as late where it was received at the designated location 50 minutes after the closing time, and evidence does not support protester's contention that it was timely delivered to the installation and then conveyed to the contracting officer after the closing time due to government mishandling.

DECISION

Valenzuela Engineering, Inc. (VEI) protests the rejection of its proposal as late under request for proposals (RFP) No. DACA05-98-R-0044, issued by the U.S. Army Corps of Engineers for operation and maintenance of groundwater treatment systems at Tooele Army Depot, Utah, and Defense Depot Ogden, Utah.

We deny the protest.

The RFP contemplated award of a fixed-price contract for preventive maintenance, calibration, servicing, corrective repairs, sampling and analysis, and engineering services for the groundwater treatment systems at the depots. RFP § B, at B-1. Hand-carried proposals were to be submitted by 11 a.m. on August 24, 1998 to the Plan Room, First Floor of the Army facility at 1325 J Street, Sacramento, California. RFP § L.3, at L-2. VEI's proposal was not received in the Plan Room until approximately 11:50 a.m. on August 24. The contracting officer thus rejected it as late.

VEI maintains that its proposal was delivered by Federal Express to the agency mailroom at 10:05 a.m., which should have allowed adequate time for the proposal to be conveyed by agency personnel to the Plan Room by 11 a.m. VEI concludes that the late receipt of its proposal must have resulted from government mishandling, and that its proposal should be considered timely.

A late offer hand-carried by Federal Express or another commercial carrier may be considered only if it is shown that government mishandling, after timely receipt at the government installation, was the paramount cause of the late receipt. Creighton & Creighton, Inc., B-227511, July 2, 1987, 87-2 CPD ¶ 11 at 2. It follows that there can be no question of wrongful government action in delivering an offer to the designated location unless timely receipt at the installation first is established. J.C.N. Constr. Co., Inc., B-270068, B-270068.2, Feb. 6, 1996, 96-1 CPD ¶ 42 at 3.

VEI has not established that its proposal was delivered to the installation prior to the 11 a.m. closing time. The agency reports that: (1) VEI's proposal was delivered by a Federal Express van which arrived at its loading dock at approximately 11:28 a.m.; (2) following scanning by security guards, the proposal was handed over to agency mailroom personnel at 11:50 a.m.; (3) at that time the time (11:50 a.m.) and date, as well as the initials of the mailroom supervisor, were handwritten on the proposal and it was delivered to the Plan Room. The contract specialist states she had left the room by that time, but that, after receiving a telephone call at noon announcing the receipt of VEI's proposal, she went to the room and noted, based on the time/date inscription, that the proposal was late. The agency has submitted a copy of the proposal cover with the annotated time, date, and initials of the supervisor, as well as supporting statements from the personnel involved,¹ and a security videotape which appears to support the time of receipt (the images are blurry, but the tape shows what appears to be a Federal Express truck arriving at 11:28).

VEI has submitted as the sole evidence in support of its position Federal Express records stating that the proposal was delivered at 10:05 a.m. on August 24, and an affidavit supporting the authenticity of those records. However, VEI has not provided, and the record does not contain, any independent evidence corroborating the Federal Express records or casting doubt on the agency's records showing late receipt.² In this regard, commercial carrier records may be considered in

¹The mailroom employee identified by Federal Express records as the individual to whom Valenzuela's proposal was delivered states that the Federal Express delivery was late on August 24, about 1 hour later than the ordinary time of 10:30 a.m. She signed for the delivery when it came in, but could not recall the exact time.

²Attached to one of the documents in the agency report was information, apparently obtained by agency officials investigating the protest, from the Federal Express on-line tracking system; it confirms Federal Express's record showing that the proposal was delivered at 10:05 a.m. The protester has argued that this attachment is an agency record, and that the agency's own records therefore show delivery at 10:05 a.m., corroborating VEI's position. However, it is clear that the information in
(continued...)

determining the time of delivery to a government installation only to corroborate relevant evidence, such as the agency time/date stamp, other documentary evidence in the possession of the agency, or statements by government personnel. J.C.N. Constr. Co., Inc., supra. Commercial carrier records, standing alone, may not serve to establish the time of delivery to the agency, since they are not evidence of receipt maintained or confirmed by the agency. Id.; Hausted, Inc., B-257087, July 28, 1994, 94-2 CPD ¶ 49 at 3-4.³

We conclude that the record shows receipt of VEI's proposal at the installation after the 11 a.m. closing time, that there thus is no basis for finding government mishandling after receipt at the installation, and that the agency properly rejected VEI's proposal as late.

The protest is denied.

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²(...continued)

question was not a record maintained by the agency, but a Federal Express record which was merely accessed by the agency. The agency cannot input data into the Federal Express database, and the database contains information unavailable to the agency, such as the time the proposal left its place of origin.

³VEI also cites as corroborating evidence the agency's security videotape, noting that the tape shows three different individuals delivering packages to the mailroom during the time period 9:42 a.m. to 10:03 a.m. This, VEI maintains, supports its position that its proposal was delivered at 10:05 a.m. This argument is without merit. None of the three individuals can be identified as a Federal Express delivery person and, even if they could be so identified, there would be no way to confirm that any of them delivered VEI's, rather than another offeror's, proposal.